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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
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17 **Scott Johnson,**

18 Plaintiff,

v.

19 **Jose Diaz**, in individual and
20 representative capacity as trustee of
21 The Diaz 1998 Trust Dated January
22 26, 1998;

23 **Rosa Diaz**, in individual and
24 representative capacity as trustee of
25 The Diaz 1998 Trust Dated January
26, 1998;

Venedicto Hernandez Madrigal;
27 and Does 1-10,

28 Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

28 Plaintiff Scott Johnson complains of Jose Diaz, in individual and
29 representative capacity as trustee of The Diaz 1998 Trust Dated January 26,
30 1998; Rosa Diaz, in individual and representative capacity as trustee of The
31 Diaz 1998 Trust Dated January 26, 1998; Venedicto Hernandez Madrigal;
32 and Does 1-10 ("Defendants"), and alleges as follows:

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34 **PARTIES:**

35 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a

1 level C-5 quadriplegic. He cannot walk and also has significant manual
2 dexterity impairments. He uses a wheelchair for mobility and has a specially
3 equipped van.

4 2. Defendants Jose Diaz and Rosa Diaz, in individual and representative
5 capacity as trustee of The Diaz 1998 Trust Dated January 26, 1998, owned
6 the real property located at or about 356 Keyes Street, San Jose, California,
7 between February 2019 and May 2019.

8 3. Defendants Jose Diaz and Rosa Diaz, in individual and representative
9 capacity as trustee of The Diaz 1998 Trust Dated January 26, 1998, own the
10 real property located at or about 356 Keyes Street, San Jose, California,
11 currently.

12 4. Defendant Venedicto Hernandez Madrigal owned Stadium Liquors
13 located at or about 356 Keyes Street, San Jose, California, between February
14 2019 and May 2019.

15 5. Defendant Venedicto Hernandez Madrigal owns Stadium Liquors
16 ("Store") located at or about 356 Keyes Street, San Jose, California, currently.

17 6. Plaintiff does not know the true names of Defendants, their business
18 capacities, their ownership connection to the property and business, or their
19 relative responsibilities in causing the access violations herein complained of,
20 and alleges a joint venture and common enterprise by all such Defendants.
21 Plaintiff is informed and believes that each of the Defendants herein,
22 including Does 1 through 10, inclusive, is responsible in some capacity for the
23 events herein alleged, or is a necessary party for obtaining appropriate relief.
24 Plaintiff will seek leave to amend when the true names, capacities,
25 connections, and responsibilities of the Defendants and Does 1 through 10,
26 inclusive, are ascertained.

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JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

8. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

10. Plaintiff went to the Store in February 2019, April 2019 and May 2019 with the intention to avail himself of its goods, motivated in part to determine if the defendants comply with the disability access laws.

11. The Store is a facility open to the public, a place of public accommodation, and a business establishment.

12. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible parking.

13. On information and belief the defendants currently fail to provide accessible parking.

14. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide an accessible entrance.

15. On information and belief the defendants currently fail to provide an accessible entrance.

16. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible door hardware.

1 17. On information and belief the defendants currently fail to provide
2 accessible door hardware.

3 18. Plaintiff personally encountered these barriers.

4 19. By failing to provide accessible facilities, the defendants denied the
5 plaintiff full and equal access.

6 20. The lack of accessible facilities created difficulty and discomfort for the
7 Plaintiff.

8 21. Even though the plaintiff did not confront the barrier, the defendants
9 currently fail to provide accessible paths of travel inside the Store.

10 22. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 23. The barriers identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the
15 Department of Justice as presumably readily achievable to remove and, in fact,
16 these barriers are readily achievable to remove. Moreover, there are numerous
17 alternative accommodations that could be made to provide a greater level of
18 access if complete removal were not achievable.

19 24. Plaintiff will return to the Store to avail himself of its goods and to
20 determine compliance with the disability access laws once it is represented to
21 him that the Store and its facilities are accessible. Plaintiff is currently deterred
22 from doing so because of his knowledge of the existing barriers and his
23 uncertainty about the existence of yet other barriers on the site. If the barriers
24 are not removed, the plaintiff will face unlawful and discriminatory barriers
25 again.

26 25. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this
2 lawsuit, once he conducts a site inspection. However, please be on notice that
3 the plaintiff seeks to have all barriers related to his disability remedied. See
4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
5 encounters one barrier at a site, he can sue to have all barriers that relate to his
6 disability removed regardless of whether he personally encountered them).

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8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
9 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 26. Plaintiff re-pleads and incorporates by reference, as if fully set forth
12 again herein, the allegations contained in all prior paragraphs of this
13 complaint.

14 27. Under the ADA, it is an act of discrimination to fail to ensure that the
15 privileges, advantages, accommodations, facilities, goods and services of any
16 place of public accommodation is offered on a full and equal basis by anyone
17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
18 § 12182(a). Discrimination is defined, *inter alia*, as follows:

19 a. A failure to make reasonable modifications in policies, practices,
20 or procedures, when such modifications are necessary to afford
21 goods, services, facilities, privileges, advantages, or
22 accommodations to individuals with disabilities, unless the
23 accommodation would work a fundamental alteration of those
24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).

25 b. A failure to remove architectural barriers where such removal is
26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
27 defined by reference to the ADA Standards.

28 c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are
2 readily accessible to and usable by individuals with disabilities,
3 including individuals who use wheelchairs or to ensure that, to the
4 maximum extent feasible, the path of travel to the altered area and
5 the bathrooms, telephones, and drinking fountains serving the
6 altered area, are readily accessible to and usable by individuals
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 28. When a business provides parking for its customers, it must provide
9 accessible parking.

10 29. Here, accessible parking has not been provided.

11 30. When a business provides door hardware, it must provide accessible
12 door hardware.

13 31. Here, accessible door hardware has not been provided.

14 32. When a business provides an entrance, it must provide an accessible
15 entrance.

16 33. Here, an accessible entrance has not been provided.

17 34. When a business provides paths of travel, it must provide accessible
18 paths of travel.

19 35. Here, accessible paths of travel have not been provided.

20 36. The Safe Harbor provisions of the 2010 Standards are not applicable
21 here because the conditions challenged in this lawsuit do not comply with the
22 1991 Standards.

23 37. A public accommodation must maintain in operable working condition
24 those features of its facilities and equipment that are required to be readily
25 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

26 38. Here, the failure to ensure that the accessible facilities were available
27 and ready to be used by the plaintiff is a violation of the law.

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1 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
2 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
3 Code § 51-53.)

4 39. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, *inter alia*,
7 that persons with disabilities are entitled to full and equal accommodations,
8 advantages, facilities, privileges, or services in all business establishment of
9 every kind whatsoever within the jurisdiction of the State of California. Cal.
10 Civ. Code § 51(b).

11 40. The Unruh Act provides that a violation of the ADA is a violation of the
12 Unruh Act. Cal. Civ. Code, § 51(f).

13 41. Defendants’ acts and omissions, as herein alleged, have violated the
14 Unruh Act by, *inter alia*, denying, or aiding, or inciting the denial of, Plaintiff’s
15 rights to full and equal use of the accommodations, advantages, facilities,
16 privileges, or services offered.

17 42. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
18 discomfort or embarrassment for the plaintiff, the defendants are also each
19 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
20 (c).)

21 43. Although the plaintiff was markedly frustrated by facing discriminatory
22 barriers, even manifesting itself with minor and fleeting physical symptoms,
23 the plaintiff does not value this very modest physical personal injury greater
24 than the amount of the statutory damages.

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1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

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13 Dated: September 27, 2019 CENTER FOR DISABILITY ACCESS

14 By: 

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16 Amanda Seabock, Esq.
17 Attorney for plaintiff